

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA et al.,

Plaintiffs,

v.

AMERICAN AIRLINES GROUP INC. and
JETBLUE AIRWAYS CORPORATION,

Defendants.

Case No. 1:21-cv-11558-LTS

**PLAINTIFFS' UNOPPOSED MOTION TO TEMPORARILY IMPOUND
CONFIDENTIAL MATERIALS RELATING TO MOTIONS IN LIMINE**

The United States of America, the State of Arizona, the State of California, the District of Columbia, the State of Florida, the Commonwealth of Massachusetts, the Commonwealth of Pennsylvania, and the Commonwealth of Virginia (collectively, Plaintiffs) respectfully move the Court under Local Rule 7.2 to temporarily impound the confidential materials described below, which will be submitted to the Court with Plaintiffs' motions in limine:

1. Exhibits 1 and 2 to Plaintiffs' Motion in Limine to Exclude Testimony of Defendants' Expert Ron DiLeo, which consist of the Expert Report of Ron DiLeo and excerpts from the Deposition of Ron DiLeo; and
2. Exhibits 1, 2, and 4 to Plaintiffs' Motion to Exclude Evidence of Defendants' Alleged Carve-out Routes, which consist of the First Amendment to Defendants' Mutual Growth Incentive Agreement, excerpts from Defendants' Northeast Alliance Agreement and its Second Amendment, and excerpts from the Deposition of Robin Hayes.

Each of these documents contains information American Airlines Group Inc. or JetBlue Airways Corporation (collectively, Defendants) has designated as Confidential or Highly Confidential under the terms of the Stipulated Protected Order entered in this case. ECF No. 99.

To the extent Defendants seek to protect the confidentiality of any of this information, the burden is on Defendants to show good cause why the information should not be disclosed on the public record. Fed. R. Civ. P. 26(a)(1). Defendants, however, are unable to make such a determination prior to Plaintiffs filing their motions in limine. To afford Defendants sufficient opportunity to review Plaintiffs' motions in limine and exhibits thereto and to move the Court to impound any information Defendants wish to protect, Plaintiffs request that the Court impound the documents described above for seven (7) calendar days. If during that time Defendants determine that they want any of this information to remain sealed, Defendants are required by Local Rule 7.2 to move the Court for an order of continued impoundment by the end of the seven-day period. If Defendants do not make such a motion, the information becomes public. L.R. 7.2(b).

The Court may issue an order of impoundment requiring that confidential information be protected from public disclosure when a party shows "good cause" for keeping the information confidential. Fed. R. Civ. P. 26(c)(1). Good cause exists where the moving party makes a "factual showing of the harm that would be sustained if the court did not allow the filing under seal." *Dunkin Donuts Franchised Restaurants, LLC v. Agawam Donuts, Inc.*, No. CIV.A. 07-11444-RWZ, 2008 WL 427290, at *1 (D. Mass. Feb. 13, 2008). In civil cases, the public's right to access judicial records may be overcome where the motion is "narrowly tailored" to protect "trade secrets in the documents or confidential business information." *Skyhook Wireless, Inc. v. Google, Inc.*, No. CV 10-11571-RWZ, 2015 WL 13675231, at *2 (D. Mass. Feb. 18, 2015).

Here, Plaintiffs' motion is narrowly tailored to avoid infringing any more than necessary upon the public's right to access judicial records. Plaintiffs seek only temporary impoundment for documents that may contain trade secrets or confidential business information.¹ Plaintiffs are

¹ Plaintiffs take no position at this time on whether any of the materials identified in this motion should properly be impounded beyond the limited seven-day period Plaintiffs are requesting.

not seeking to impound or redact any documents beyond the exhibits specified above. Plaintiffs therefore respectfully request the Court to issue an order of temporary impoundment.

Plaintiffs have met and conferred with Defendants as required by Local Rule 7.1 and Defendants do not oppose this motion.

Dated: September 2, 2022

Respectfully submitted,

/s/ William H. Jones, II

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behalf of the Plaintiff States*

LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1(a)(2), I hereby certify that I conferred with counsel for Defendants on September 1 and 2, 2022. Defendants confirmed that they do not oppose this motion.

/s/ James H. Congdon

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ William H. Jones, II

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